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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 20th OF SEPTEMBER, 2022

WRIT PETITION No. 932 of 2022

BETWEEN:-

MAA CHAMUNDA ENTERPRISES THROUGH ITS PARTNER SHRI HARIOM SHIVHARE S/O SHRI KRISHNA PRASAD SHIVHARE, AGED ABOUT 54 YEARS, OCCUPATION- BUSINESS, R/O 101, PRINCE PALACE, 6, JANAKI NAGAR, ANNEX, NAVLAKHA (MADHYA PRADESH)

.....PETITIONER

(SHRI PIYUSH MATHUR, SENIOR ADVOCATE ALONG WITH MADHUSUDAN DWIVEDI, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. THE STATE OF MADHYA PRADESH, THROUGH PRINCIPAL SECRETARY, COMMERCIAL TAX DEPARTMENT (EXCISE) VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. COMMISSIONER (EXCISE) OFFICE OF EXCISE COMMISSIONER, MOTI MAHAL, GWALIOR (MADHYA PRADESH)

3. COLLECTOR (EXCISE) COLLECTOR OFFICE, RATLAM, DISTRICT RATLAM (MADHYA PRADESH)

4. ASSISTANT COMMISSIONER (EXCISE) EXCISE DEPARTMENT RATLAM, DISTRICT RATLAM (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SHREY RAJ SAXENA, LEARNED COUNSEL FOR THE RESPONDENTS)

*This petition coming on for orders this day, **JUSTICE VIVEK RUSIA** passed the following:*

ORDER

The petitioner has filed the present petition being aggrieved by the order dated 24.12.2021 passed by the Excise Commissioner, Gwalior (Respondent No.2) whereby recovery of Rs.3,72,56,239/- has been upheld payable under the heads of annual license fees and Minimum Guaranteed Excise Duty.

Petitioner's case

2. The petitioner is a partnership firm engaged in the business sale of liquor under the license issued by the M.P. Excise Department.

3. The State Government vide its notification dated 25.02.2020 framed and issued the Liquor Excise Policy for the year 2020-2021 as per the provisions contained in Section 62/63 of the M.P. Excise Act, 1915 and the Rules framed thereunder. In the said policy process of Tendering and Auctioning of the Liquor Shops (Country and Foreign Liquors), the details of descriptions for accepting the tenders, fixing the minimum and maximum sale price, depositing of security amount and process of determination of license fees were mentioned in the various clauses.

4. Under the above notification petitioner's firm purchased an E-Tender and participated in the E-Auction Proceedings for the allotment of all shops of District Ratlam (Single Group) (Country Liquor and Foreign Liquor) The bid of the petitioner was found to be highest i.e. Rs.2,18,00,00,000/-, hence accepted for the period w.e.f. 01.04.2020 to 31.03.2021 with respect to shops of Single Group Ratlam. Consequently, a communication letter was issued on 16.03.2021 for depositing of remaining security amount (Dharohar Rashi) of Rs. 8,72,38,712 out of the total Dharohar Rashi amounting to Rs.10,90,00,000/-.

5. That as per the provisions contained in the clause No.10 of the Excise Policy, the petitioner is required to furnish a Bank Guarantee in the shape of a security deposit as well as 18 post-dated cheques equivalent to the Minimum Security Duty Amount as additional security for which again a letter was issued on 17.03.2020 by the Assistant Excise Commissioner, Ratlam.

6. According to the petitioner that due to the sudden outbreak of the Covid-19 Pandemic, a nationwide lockdown was imposed w.e.f. 25.03.2020 initially for a period of 21 days therefore the State Government issued several directions for the management of liquor shops. In order to give some relaxation to the licensees vide circular dated 31.03.2020 for a licensee of the year, 2020-2021 time was extended for depositing of license fees and security amount by further directing that the shops will be operational only after lifting of the lockdown.

7. Thereafter, again a circular was issued by the Excise Commissioner to the Collectors by which certain guidelines were issued for declaring the dry day and its proportionate adjustment with the Minimum Guaranteed amount of payable Excise Duty.

8. The petitioner has obtained the liquor shop from 07.05.2020. Vide notification dated 23.05.2020, the Government has amended the liquor policy by inserting clause No.70, in order to compensate the loss to the licensee the period of the liquor contract has been extended upto 31.05.2021 due to the Covid-19 situation. As per clauses 70.1 and 70.2 formula was prescribed for the determination of annual license fees as well as Minimum Guaranteed Payable Excise Duty. In consequence of the said amendment, the State Government has issued a circular dated 23.05.2020, to all the District Collectors.

9. The petitioner submitted an application seeking an

extension of liquor license till 31.05.2021. Vide order dated 24.06.2020, the Assistant Excise Commissioner determined the annual license fees as well as the Minimum Guaranteed Excise Duty amount payable by the petitioner and communicated it to the petitioner. The petitioner continued to operate the liquor shops as per restructuring annual license fees and Minimum Guaranteed Payable Excise Duty determined by the Assistant Excise Commissioner vide order dated 24.06.2020.

10. The Collector has again declared the lockdown on 03.04.2021 and 04.04.2021 for the area of Municipal Corporation, Ratlam and consequence to it, Assistant Commissioner Excise has ordered for closure of liquor shops. Thereafter, again vide order dated 09.04.2021, the Collector has imposed restriction of transportation of liquor from 09.04.2021 to 19.04.2021 and the period 10.04.2021 to 18.04.2021 was declared as dry days looking to the widespread of Corona-19. Again the District Collector, Ratlam has imposed restrictions on the sale, collection and transportation of liquor from 19.04.2021 to 25.04.2021 as well as declared these days as dry days. Again vide order dated 25.04.2021, w.e.f. 26.04.2021 to 01.05.2021 and vide order dated 29.04.2021 w.e.f 01.05.2021 to 06.05.2021, restrictions were imposed and these days were declared as dry days.

11. Vide circular dated 29.04.2021, the Excise Commissioner issued directions to all the Collectors for depositing the Minimum Guarantee Excise Duties between 01.04.2021 to 31.05.2021 and also directed to ensure the collection of Excise Duties by treating the dry days as non-working days., as per clause 31 and 32 of Excise Policy.

12. A show cause notice dated 13.05.2021 was issued to the petitioner for depositing the Minimum Guaranteed Excise Duty

for the first fortnight of the month of April as per the provision contained in clause 31.4 of the notification dated 25.09.2020. The petitioner submitted a reply to the show cause notice that duty was decided as per order dated 24.06.2020 at the rate of 11% and the exemption was granted annul at the rate of 10%. According to the petitioner, the Assistant Commissioner was not considering the claim for the exemption of Minimum Guarantee Excise Duty for the period of dry days w.e.f. 09.04.2021 to 31.05.2021. According to the petitioner, the exemption at the rate of 11 % ought to have been granted but the Assistant Commissioner has illegally granted only 10% of exemption in the Minimum Guarantee Excise Duty without considering the reply.

13. A show cause notice dated 25.06.2021 was issued for initiation of recovery proceedings as the petitioner did not deposit the 1% of Additional Minimum Guarantee Excise Duty. Since the petitioner has failed to deposit the amount, therefore, Assistant Commissioner Excise has requested the Branch Manager, Punjab National Bank, Branch Manoramaganj, Indore to encash the Bank Guarantee amounting to Rs.2,18,30,776/-. The petitioner submitted a detailed reply to the show cause notice when no order was passed, the petitioner has approached this Court by way of Writ Petition No.23318/2021. Vide order dated 26.10.2021, Writ Petition was disposed of with a direction to respondent No.2 to consider the representation of the petitioner by passing a reasoned order.

14. In compliance with the aforesaid order, the petitioner has submitted a detailed representation on 30.10.2021 followed by legal notice dated 25.11.2021. The representation of the petitioner has been dismissed and recovery of Rs.3,72,56,239/- has been upheld. Out of the above total recovery, the respondents have

adjusted the amount of Rs.1,54,25,465/- from the advance annual license fee and recovered Rs.2,18,30,776/- from the bank guarantee. Hence, the petitioner is seeking not only quashment of the order dated 24.12.2021, demand notice dated 25.06.2021, order of encashment of Bank Guarantee dated 25.06.2021 but also a refund of Rs.3,72,56,239/-.

Arguments on behalf of the petitioner

15. Shri Piyush Mathur, learned Senior Counsel argued that the Excise Commissioner has failed to see that the subordinate authorities i.e. Excise Commissioner did not follow the exemption policy uniformly for April 2021 to May 2021. Since in districts Jabalpur, Dhar and Sagar exemption has been properly granted at the rate of 11 % for the close period as dry days without there being any adjudication, the order for encashment of bank guarantee has been passed which is arbitrary on part of the respondents. Without there being any breach or violation of terms and conditions of the agreement of policy on part of the petitioner when during the month of April 2021 and May, 2021 the liquor shops were totally closed, the respondents' authorities were required to exempt the Minimum Guaranteed Excise Duty amount at the rate of 11% but the respondent has exempted at the rate 10% and illegally demanded 1% extra duty followed by recovery by way of encashment and adjustment. It is further submitted by the learned senior counsel that while passing the impugned order clause 46(3) of policy dated 25.02.2020 has not been properly examined which clearly provides for exemption from payment of Minimum Guaranteed Excise Duty and license fee on a proportionate basis for the period on which the liquor shops were closed, therefore such unconstitutional and arbitrary action is liable to be set aside by directing the respondents to

refund Rs.3,72,56,239/-.

16. In support of the above contentions, learned senior counsel placed reliance on the judgment passed by Apex Court in the case of *Bimal Chandra Banerjee Vs. State of Madhya Pradesh, 1972 (2) SCC 467*. Learned Senior counsel for the petitioner further submits that in case of *Secretary, Department of Excise & Commercial Taxes and others Vs. Sun Bright Marketing (P) Ltd. Chhattisgarh and another reported in (2004) 3 SCC 185*, the Apex Court has held that the scheme of the Act, the General License Conditions and the conditions contained in the Sale Memo postulate that, in the event, the licensee is required to close a shop in terms of an order passed by the statutory authority or otherwise, he would be entitled to claim remission in license fee unless the same is expressly barred. Clause (VII) does not prohibit remission in license fee and/ or grant of compensation if the closure is directed for any reason other than those mentioned in Clauses (I) to (VI) of the said Sale Memo. Clause 7 i.e. closure for dry days does not prohibit remission in the license fees or grant of compensation.

Reply by the Government

17. The respondents have filed a reply in support of the impugned order passed by the Excise Commissioner by submitting that the State Government issued Excise Policy for the year 2020-2021 under the M.P. Excise Act, 1915 for executing the process of tendering and auction of the liquor shop vide notification dated 25.02.2020, wherein the details were described for allotment of liquor shops and its performance. The notification categorically prescribed the fixing of duty of liquor shops, depositing of security amount and payment of license fee and duty. In pursuance of the above notification, auction proceedings

for allotment of shops of District Ratlam were initiated and in conclusion, the petitioner was declared as the highest bidder with a bid of Rs. 218 crores and as such the allotment was issued in favour of the petitioner for the period w.e.f. 01.04.2020 to 31.03.2021 with respect to shops of Single Group Ratlam. As per provisions of the notification dated 25.02.2020 under clause 8, it is imperative to deposit 5% of the bid value as earnest money deposit and on acceptance of bid and execution of the contract the amount of earnest money deposit is adjusted under the head of annual license fee. The relevant clause is reproduced as under: -

8.1 वर्ष 2020-21 की टेका अवधि के लिए मदिरा दुकानों के एकल समूहों के नवीनीकरण की स्थिति में उस मदिरा दुकान के एकल समूह का आरक्षित मूल्य ही उसका वार्षिक मूल्य होगा तथा ई टेण्डर क्लोज विड एवं ऑक्शन में प्राप्त एवं स्वीकृत उच्चतम ओफर की राशि, उस मदिरा दुकान के एकल समूह का वर्ष 2020-21 की टेका अवधि के लिये वार्षिक मूल्य होगा।

8.2 वर्ष 2020-21 की टेका अवधि के लिये वार्षिक लायसेंस फीस समानरूप से संबंधित मदिरा दुकान के एकल समूह के वार्षिक मूल्य का 5 प्रतिशत होगी। अनुज्ञप्तिधारक को वार्षिक लायसेंस फीस के विरुद्ध मदिरा प्रदाय की पात्रता नहीं होगी।

8.3 मदिरा दुकान के एकल समूह के वार्षिक मूल्य में से निर्धारित 5 प्रतिशत वार्षिक लायसेंस फीस की राशि कम किये जाने पर, अवशेष कुल राशि संबंधित मदिरा दुकान के एकल समूह की वर्ष 2020-21 की टेका अवधि के लिए वार्षिक न्यूनतम प्रत्याभूत ड्यूटी निर्धारित होगी। जिसके विरुद्ध अनुज्ञप्तिधारक को मदिरा प्रदाय की पात्रता होगी।

18. It is further stated that the remaining 95% of the bid value is a minimum guaranteed duty of the liquor shop which is paid by the allottee in accordance with Clause 31 of the notification dated 25.02.2020, which categorically provides that in the first quarter of the year of allotment, 30% is to be paid and in the third and fourth quarter 25% -25% is to be paid. Accordingly, under the aforementioned bifurcation, the minimum guaranteed duty is to be paid by the allottee. According to the respondent during the Covid-19 Pandemic, a nation wise lockdown was imposed

w.e.f.25.03.2020 due to which from 01.04.2020 till 07.05.2020 the liquor shops remained closed and subsequently the petitioner was allowed to open the liquor shops from 07.05.2020. In consideration of the fact that shops remained closed for a specific period of time, as the State Government issued relevant directions thereby extending the benefit to the licensees on 23.05.2020, by which an option was extended in favour of the licensees that they can elect for extension of the license period for a further period of 2 months period the minimum guaranteed duty shall be equal to the monthly proportion of April and May month i.e. 10% of the minimum guaranteed duty.

Arguments on behalf of learned Dy. Advocate General

19. Shri S.R.Saxena, learned Deputy Advocate General contended that the petition has been filed without exhausting statutory alternate remedy as prescribed 62(2) (c) of the MP Excise Act, 1915. Due to Corona, shops remained closed, therefore, the State Government has granted the benefit of exemption to the licensee in respective proportion and no Minimum Guaranteed Duty was recovered from the licensee for that respective period. The petitioner has not challenged the validity of Clause 9 of the circular dated 24.06.2020, thus Excise Commissioner, as well as Commissioner, has rightly been given interpretation of clause 9 of the aforesaid circular, hence, no interference is called for and amount of 1% withheld by the petitioner has rightly been recovered by encashing the bank guarantee and adjustment of the amount of Rs.1,54,25,465/-.

20. It is further submitted by the learned Dy. Advocate General that in the month of April 2021 and May 2021, the petitioner has been given exemption of Rs.1, 57,24,094/- in license fees and Rs.35,65,84,286/- in Minimum Guaranteed Duty. In total

petitioner has availed relaxation of Rs.37,23,08,380/- for closure of shops on the dry days in the month of April, 2021 and May, 2021, therefore, there is no defilement of verdict in the case of *Secretary, Department of Excise & Commercial Taxes and others (supra)*, hence, the petition is liable to be dismissed.

Appreciations and conclusion....

21. In the liquor policy notified for the year 2020-2021 (From 1st April, 2020 till 31st March, 2021), on 25.05.2020, was amended vide notification dated 23.05.2020 for compensating the losses to the licensees due to the closure of liquor shops due to Corona Covid-19 Pandemic. Clause 70 has been inserted for giving relaxation in payment of Minimum Guaranteed Excise Duty payable at the rate of 10%, which is reproduced below:-

70.वर्ष 2020-21 अनुज्ञप्तिधारियों को उनकी ठेका अवधि दिनांक 31.05.2021 तक बढ़ायी जाने का विकल्प:-

कोविड-19 के कारण उद्भूत परिस्थितियों को दृष्टिगत रखते हुए वर्ष 2020-21 के अनुज्ञप्तिधारियों को उनकी ठेका अवधि दिनांक 31.05.2021 तक बढ़ाये जाने का विकल्प दिया जाता है। यदि इस विकल्प के चयन हेतु कोई अनुज्ञप्तिधारी आबकारी आयुक्त द्वारा निर्धारित प्रारूप में अपना सहमति आवेदन, वांछित दस्तावेजों के साथ संबंधित जिला कलेक्टर को प्रस्तुत करता है, तो ठेका संचालन की अवधि दिनांक 31.05.2021 तक जिला कलेक्टर द्वारा बढ़ायी जा सकेगी। जो अनुज्ञप्तिधारी इस विकल्प का लाभ न लेना चाहे, वे मूल आबकारी नीति वर्ष 2020-21 के अनुसार ठेका संचालित करते रहेंगे। जिन अनुज्ञप्तिधारियों के आवेदन स्वीकार किये जाते हैं, मात्र उनके लिए इस कंडिका की निम्नलिखित उप कंडिकाएँ लागू होंगी।

70.1 अनुबंध के लिए वार्षिक मूल्य की गणना निम्नानुसार होगी :-

(क.) नवीन वार्षिक लायसेंस फीस = वर्तमान वार्षिक लायसेंस फीस - लॉकडाउन अवधि के लिए लायसेंस फीस में दी गई छूट + वर्ष 2021-22 के माह अप्रैल एवं मई हेतु प्रत्येक अतिरिक्त दिवस के आधार पर परिगणित लायसेंस फीस।

(ख.) नवीन न्यूनतम प्रत्याभूत की राशि = वर्तमान न्यूनतम प्रत्याभूत की राशि - लॉकडाउन अवधि के लिए न्यूनतम प्रत्याभूत की राशि में दी गई छूट + वर्ष 2021-22 के माह अप्रैल एवं मई हेतु वर्ष 2020-21 के माह अप्रैल एवं मई के लिए निर्धारित न्यूनतम प्रत्याभूत की राशि।

70.2 कंडिका 31.1 के अनुसार माह मई 2020 एवं जून 2020 के लिए

न्यूनतम प्रत्याभूत राशि, वार्षिक न्यूनतम प्रत्याभूत की राशि के 10 प्रतिशत प्रतिमाह परिगणित होती है। विकल्प चुनने वाले अनुज्ञप्तिधारियों के लिए माह मई 2020 एवं जून 2020 के लिये यह राशि 7.5 प्रतिशत प्रति माह नियत की जाती है। इस प्रकार शेष रही 5 प्रतिशत न्यूनतम प्रत्याभूत की राशि की वसूली माह जनवरी 2021 से मई 2021 की अवधि में प्रतिमाह 1 प्रतिशत अतिरिक्त रूप से की जाएगी।

70.3 नवीन परिगणित वार्षिक लायसेंस फीस तथा वर्तमान वार्षिक लायसेंस फीस के अंतर की राशि दिनांक 31 मार्च 2021 तक अनिवार्य रूप से जमा की जाये।

70.4 नवीन परिगणित प्रतिभूति राशि का न्यूनतम 20 प्रतिशत विकल्प प्रस्तुत करने के साथ जमा करना अनिवार्य है। विकल्प प्रस्तुत करने के अंतिम दिवस से 7 कार्य दिवस के भीतर 20 प्रतिशत तथा 21 कार्य दिवस के भीतर शेष 60 प्रतिशत जमा की जाये।

70.5 विकल्प के साथ निर्धारित शपथ पत्र, डेटेड चैक एवं प्रतिरूप करार प्रस्तुत करना अनिवार्य होगा। कुल 22 पोस्ट डेटेड चैक (= 18 पूर्व निर्धारित + 4 बढी हुई अवधि के लिए) जमा करना अनिवार्य होगा।

70.6 इस अधिसूचना के राजपत्र में जारी होने के दिनांक से 05 दिवस की अवधि (अथवा ऐसी अवधि जैसा राज्य शासन नियत करे) में वर्तमान अनुज्ञप्तिधारियों को उपरोक्त विकल्प, यदि वे उचित समझे, चुनना आवश्यक होगा, अन्यथा यह माना जायेगा कि वे पूर्व अनुबंध पर कायम है तथा वर्ष 2020-21 के लिए प्रावधानित आबकारी व्यवस्था (राजपत्र दिनांक 25.02.2020) के अनुरूप मदिरा दुकानों का संचालन करना उनके लिए बंधनकारी होगा।

70.7 मूल आबकारी नीति वर्ष 2020-21 के समस्त सुसंगत प्रावधान, विकल्प चुनने वाले अनुज्ञप्तिधारियों के लिए बढी हुई अवधि (01 अप्रैल, 2021 से 31 मई, 2021) में युक्तियुक्त रूप से लागू होंगे।

70.8 यदि संशोधित नीति के क्रियान्वयन में कोई कठिनाई उत्पन्न होती है, अथवा आबकारी व्यवस्था के सुचारू रूप से संचालन के लिए ऐसा करना आवश्यक प्रतीत हो, तो आबकारी आयुक्त तदनुसार समुचित निर्देश जारी कर सकेंगे।

वार्षिक मूल्य, वार्षिक लायसेंस फीस एवं न्यूनतम प्रत्याभूत ड्यूटी का निर्धारण :

22. By way of the first relaxation, the license period has been enhanced for additional two months i.e. upto 31.05.2021 and the option to the licensee was given that if it is acceptable to them then they will have to give an application/representation to the Collector and if applications are accepted then for those licenses clause 70.1 to 70.8 would apply. So far as clauses 70.1 (a) and (b)

are concerned, the petitioner has no objection to them. The petitioner is only disputing the compliance part of clause No.70.2. According to the petitioner in the month of April, 2021 and May, 2021 shops remained closed by order of the Collector due to Corona Pandemic, therefore, the petitioner is not liable to pay 1% of additional fee payable for the Month of April, 2021 and May, 2021. As per clause 31.1, the Minimum Guaranteed Excise Duty and annual license fees at the rate of 10% are payable for the months of May & June 2020. Those licensees who have opted for extension of license period upto 31st May, 2021 have been granted benefit to pay aforesaid 10 -10 % amount Minimum Guaranteed Excise Duty for May & June 2020 by way of instalment i.e. 7.5-7.5 % in the month of December 2021 and remaining 5-5 % shall be payable from January, 2021 to May, 2021 at the rate of 1%.

23. The petitioner has wrongly construed that 1% of Minimum Guaranteed Excise Duty is payable for the month of April, 2021 and May, 2021 as shops remained closed in these two months. The petitioner has failed to consider that this 1% Minimum Guaranteed Excise Duty is payable in these two months excise duty payable in May, 2020 and June, 2020. The facility of deferment has been granted to the petitioner. @ 1% is payable alongwith duty payable for the month of April, 2021 and May, 2021. This 1 % duty has nothing to do with the closure of shops in April, 2021 and May, 2021 due to the Corona Pandemic. The petitioner has to pay the Minimum Guaranteed Excise Duty and annual fee at the 10% payable for the month of April, 2021 and May, 2021 and in addition to this 1%, the duty of the period May, 2020 and June, 2020 in total he has to pay 11%, therefore, petitioner's contention cannot be accepted that the respondents are

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charging 1% extra from him. So far as dry days failing in April, 2021 and May, 2021 are concerned, exemption under both the categories have already been granted to the petitioner vide order dated 12.07.2021 by the Collector, Ratlam, the details are as under:

क्र.	छूट की अवधि	लायसेंस फीस में छूट की राशि	न्यूनतम प्रत्याभूत ड्यूटी में छूट की राशि	छूट की कुल राशि (वार्षिक मूल्य)
1	दिनांक 03 एवं 04 अप्रैल, 2021	1,95,282	45,14,288	47,09,570/-
2	दिनांक 10.04.2021 से 30.04.2021 तक	62,71,251	14,49,69,998	15,12,41,249
3	दिनांक 01.05.2021 से 31.05.2021 तक	92,57,561	20,71,00,000	21,63,57,561
	योग	1,57,24,094	35,65,84,286	37,23,08,380

In view of the above, we do not find any ground to interfere with the impugned order, Writ Petition is, accordingly, dismissed. No order as to cost.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

praveen